

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NICOLE DENECE BROWNLEE,
Plaintiff,
v.
COMMISSIONER OF SOCIAL SECURITY
Defendant.

Case No. 1:21-cv-00399-CDB (SS)

**ORDER ON STIPULATION FOR AWARD
OF ATTORNEY FEES PURSUANT TO THE
EQUAL ACCESS TO JUSTICE ACT, 28
U.S.C. § 2412(d)**

(Doc. 27)

Pending before the Court is the stipulated request of Plaintiff Nicole Denece Brownlee (“Plaintiff”) for the award of attorney’s fees pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), in the amount of \$6,300.00 to counsel for Plaintiff, Jonathan O. Peña.¹ (Doc. 27).

The parties agree that an award of attorney's fees to counsel for Plaintiff should be made payable to Plaintiff, but if the Department of the Treasury determines that Plaintiff does not owe a federal debt, then the Commissioner shall cause the payment of fees, expenses, and costs to be made directly to Plaintiff's counsel, Jonathan O. Peña. *Id.* at 2.

On August 20, 2024, the Court granted the Plaintiff's motion for summary judgment and

¹ Both parties have consented to the jurisdiction of a U.S. magistrate judge for all proceedings in this action, in accordance with 28 U.S.C. § 636(c)(1). (Doc. 10).

1 remanded the case pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner for
2 further proceedings. (Doc. 25). Judgment was entered the same day. (Doc. 26). On November
3 19, 2024, Plaintiff filed the pending stipulation for attorney fees as a prevailing party. (Doc. 27).
4 See *Shalala v. Schaefer*, 509 U.S. 292, 300-02 (1993) (concluding that a party who wins a
5 sentence-four remand order under 42 U.S.C. § 405(g) is a prevailing party). The initial 60-day
6 deadline for filing of appeals (Fed. R. App. P. 4) fell on Saturday, October 19, 2024; as such, the
7 period continued to run until the next day that was not Saturday, Sunday, or a legal holiday,
8 namely October 21, 2024. Fed. R. App. P. 26(a). Plaintiff had 30 days from October 21, 2024
9 to file her application for fees and expenses under EAJA. As such, Plaintiff's filing is timely.
10 *Van v. Barnhart*, 483 F.3d 600, 607 (9th Cir. 2007). The Commissioner does not oppose the
11 requested relief. (Doc. 27).

12 The EAJA provides for an award of attorney fees to private litigants who both prevail in
13 civil actions (other than tort) against the United States and timely file a petition for fees. 28
14 U.S.C. § 2412(d)(1)(A). Under the EAJA, a court shall award attorney fees to the prevailing
15 party unless it finds the government's position was "substantially justified or that special
16 circumstances make such an award unjust." *Id.* Here, the government did not show its position
17 was substantially justified and the Court finds there are not special circumstances that would
18 make an award unjust. Moreover, the government does not oppose Plaintiff's stipulated request.
19 See *Sanchez v. Berryhill*, No. 1:16-cv-01081-SKO, 2018 WL 509817, at *2 (E.D. Cal. Jan. 23,
20 2018) (finding position of the government was not substantially justified in view of the
21 Commissioner's assent to remand); *Knyazhina v. Colvin*, No. 2:12-cv-2726 DAD, 2014 WL
22 5324302, at *1 (E.D. Cal. Oct. 17, 2014) (same).

23 Plaintiff requests an award of \$6,300.00 in EAJA fees. (Doc. 27). The Ninth Circuit
24 maintains a list of the statutory maximum hourly rates authorized by the EAJA, adjusted for
25 increases in the cost of living, on its website. See *Thangaraja v. Gonzales*, 428 F.3d 870, 876-
26 77 (9th Cir. 2005). Even assuming Plaintiff's counsel seeks the median of the published
27 maximum rate associated with the years (2021 and 2022) during which he engaged in services in
28

1 this case (which the Court computes as \$226.25),² the requested award would amount to
2 approximately 29 hours of attorney time (not accounting for any paralegal time expended). The
3 Court finds this reasonable and commensurate with the number of hours an attorney would need
4 to have spent reviewing the certified administrative record in this case (1,164 pages; Doc. 12)
5 and preparing a 29-page opening brief and four-page reply brief in support of a motion for
6 summary judgment that raises two issues for the Court's review. (Doc. 18). With respect to the
7 results obtained, Plaintiff's counsel obtained a favorable judgment remanding the case for further
8 proceedings. (Doc. 25 at 14).

9 EAJA fees, expenses, and costs are subject to any offsets allowed under the Treasury Offset
10 Program ("TOP"), as discussed in *Astrue v. Ratliff*, 560 U.S. 586 (2010). If the Commissioner
11 determines upon effectuation of this order that Plaintiff's EAJA fees are not subject to any offset
12 allowed under the TOP, the fees shall be delivered or otherwise transmitted to Plaintiff's counsel.

13 Accordingly, it is HEREBY ORDERED:

- 14 1. Plaintiff's stipulated request for attorney's fees pursuant to the EAJA (Doc. 27) is
15 GRANTED; and
- 16 2. The Commissioner is directed to pay to Plaintiff as the prevailing party attorney's fees in
17 the amount of \$6,300.00, pursuant to the terms set forth in the parties' stipulation. (Doc.
18 27). Fees shall be made payable to Plaintiff, but if the Department of the Treasury
19 determines that Plaintiff does not owe a federal debt, then the government shall cause the
20 payment of fees, expenses, and costs to be made directly to Plaintiff's counsel, as set forth
21 in the stipulation.

22 IT IS SO ORDERED.

23 Dated: November 20, 2024


UNITED STATES MAGISTRATE JUDGE

27 2 *Statutory Maximum Rates Under the Equal Access to Justice*, available at
28 https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/ (last visited November 20,
2024).